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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

24 Cr. 291 (LAK)

5 MATTHEW QUEEN,

6 Oral Argument

7 Defendant.

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8 New York, N.Y.
9 October 2, 2024
10 2:15 p.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: JACQUELINE CHRISTINE KELLY

17 MARY CHRISTINE SLAVIK

18 Assistant United States Attorneys

19 SAM A. SCHMIDT

20 Attorney for Defendant

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1 THE DEPUTY CLERK: United States against Matthew
2 Queen. Government, are you ready? Can you please put your
3 appearance on the record.

4 MS. KELLY: Yes. Good afternoon, your Honor.
5 Jacqueline Kelly and Christy Slavik, for the government.

6 THE COURT: Thank you.

7 THE DEPUTY CLERK: Defendant, are you ready?

8 MR. SCHMIDT: We are ready, your Honor. Good
9 afternoon. Sam Schmidt, for Matthew Queen. Mr. Queen is
10 virtually here.

11 THE COURT: Well, he's listening on the telephone is
12 what I understand. Is that right?

13 THE DEPUTY CLERK: And he can see on video as well.

14 THE COURT: Yes, he's virtually here.

15 OK. Mr. Schmidt, your motion.

16 MR. SCHMIDT: Yes. First, your Honor, I apologize
17 for —

18 THE COURT: The lectern, please.

19 MR. SCHMIDT: Oh.

20 THE COURT: I'll hear you better from there.

21 MR. SCHMIDT: Your Honor, I do apologize for any
22 confusion with the exhibits.

23 THE COURT: OK. No worries.

24 MR. SCHMIDT: Your Honor, this is actually a fairly
25 brief motion, and it's an unusual one, I acknowledge that. But

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1 in this case, the government has set forth what the crime was.
2 And in the present information, the crime is the false
3 documents given to the government with the intent to obstruct,
4 impede, influence on the investigation.

5 Now, in this case the physical documents that we're
6 talking about are the notes that Mr. Queen wrote at a time in
7 May and not at the time when he first told both the government
8 and others he wrote it.

9 THE COURT: And not on the date which at the top of
10 the notes is contained —

11 MR. SCHMIDT: That is correct.

12 THE COURT: — written by him.

13 MR. SCHMIDT: That is correct.

14 THE COURT: So the date there — I know you won't like
15 the word "false" — but it's certainly inaccurate.

16 MR. SCHMIDT: That is correct.

17 THE COURT: All right.

18 MR. SCHMIDT: The notes were given, with my
19 understanding, because I do not have — unfortunately,
20 Mr. Queen's attorney at that time is deceased, but based on the
21 document that the government provided, which is notes by
22 Ms. Kelly of the conversation with the attorney on —

23 THE COURT: And those notes are not in the information
24 or the indictment, correct?

25 MR. SCHMIDT: The notes are not in the information or

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1 the indictment, but in the — and I make the assumption that
2 the notes prepared by Ms. Kelly accurately reflect the
3 conversation that she had with the attorney. Government has
4 not —

5 THE COURT: And so, best case, even granting the
6 assumption, it's hearsay.

7 MR. SCHMIDT: It is hearsay, but it's hearsay as it —

8 THE COURT: It's actually double hearsay, but I'm
9 granting you the assumption, for the sake of discussion, that
10 Ms. Kelly accurately recorded what this now deceased person
11 told her, or at least what she understood that person to have
12 said, offered for the truth of what that person said.

13 MR. SCHMIDT: Well, it's actually — whether it's
14 offered for the proof or not is not actually relevant. It's
15 actually offered for that it was said. The reason why I say
16 that is that the basis of the government's charge is that the
17 physical notes that was given to them after this conversation
18 does not include the portion concerning what Employee-1 said,
19 the language that is the subject to the obstruction statute,
20 that being: "make this disappear," "we never had this meeting,"
21 and "this is the only copy that they have." The reason is that
22 if you take the notes and include the statements made relating
23 to that conversation, that January 20 — I don't remember the
24 exact date — conversation when my client was present, right,
25 you have a document that is not false for the purpose of

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1 obstructing —

2 THE COURT: No, you have a document that is false,
3 which is supposedly contradicted by another document that
4 doesn't even contain an account of the relevant facts.

5 MR. SCHMIDT: It does contain the relevant facts.

6 THE COURT: To wit?

7 MR. SCHMIDT: The document that you're talking about,
8 which is the notes by the government of the conversation, it
9 includes the facts that the government indicates makes it
10 false.

11 THE COURT: To wit, what is that fact?

12 MR. SCHMIDT: The facts that Employee-1 did say this
13 needs to go away, that we didn't have this conversation, and
14 the only copy is the one you have — and this is by Employee-2
15 — the only one is the one you have on my computer. Those are
16 the statements that were not included in the notes that the
17 government claims is false because of that.

18 THE COURT: OK.

19 MR. SCHMIDT: Now, it is, I think, clear now, under
20 the Rules of Evidence, that a document that is not complete can
21 be completed by oral statements.

22 THE COURT: If what condition is satisfied?

23 MR. SCHMIDT: That it's relevant.

24 THE COURT: If it's necessary to accomplish a
25 particular purpose, right?

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1 MR. SCHMIDT: And the purpose is to fully understand.

2 THE COURT: And who decides if it's necessary fully to
3 understand the document?

4 MR. SCHMIDT: Well, the indictment.

5 THE COURT: It's a preliminary question of fact, isn't
6 it, under Rule 104?

7 MR. SCHMIDT: It would be if the information did not
8 define what made the document false. The information defines
9 what makes the document false, and by defining it — but,
10 indeed, having that information prior to receiving the
11 document, it no longer is false, nor can it be material. And
12 the government does leave out the requirement that the false
13 document be material.

14 THE COURT: Well, the case you cited for the
15 proposition that the Second Circuit, in contrast to other
16 circuits, requires materiality does not remotely support that
17 proposition. It isn't even close.

18 MR. SCHMIDT: I respectfully disagree.

19 THE COURT: Well, you're entitled, but that's my
20 reading of it.

21 MR. SCHMIDT: The Second Circuit said that —

22 THE COURT: It was a case having to do with whether
23 there was a constructive amendment of the charging instrument,
24 and at the end of it, the Second Circuit said, in substance,
25 "and besides, it was obviously material," which is different

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1 from a holding that materiality is an element of the offense.
2 And it had to do with the issue of constructive amendment, not
3 the sufficiency of the charging instrument.

4 MR. SCHMIDT: Your Honor, the Court also stated that
5 by not requesting that the document had to be material, they
6 waived that argument. Why would they — what would be the
7 purpose —

8 THE COURT: Therefore, making whatever the Second
9 Circuit said on the issue of materiality dictum, unnecessary to
10 the result because the argument had been waived. You're
11 absolutely right about that.

12 MR. SCHMIDT: That is the only relevant decision on
13 this section, your Honor, by the Second Circuit.

14 THE COURT: Yes, well, *Marbury v. Madison* doesn't help
15 you any more than that.

16 MR. SCHMIDT: Well, it certainly seems to me it
17 indicates that it does, and the government, in their response,
18 did not oppose the need for materiality.

19 THE COURT: It's quite possible because it's a red
20 herring in this case, on this motion. Trial's another matter.
21 That issue was not foreclosed in the Second Circuit based on
22 the authority you cited to me.

23 MR. SCHMIDT: I think it's persuasive, though.

24 THE COURT: Well, the question is how much?

25 MR. SCHMIDT: So there is no — so the issue, your

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1 Honor, isn't whether it's a jury question. It's actually more
2 of a legal question whether a document that is given to the
3 government that, for argument sake, is incomplete, leaving out
4 facts that the government believes is true, that is
5 supplemented by the facts that the government believes is
6 necessary prior to receiving that document means that that
7 document is not indeed incomplete nor false. That's the
8 undisputed facts. A jury does not need to make a determination
9 of any of that. That is undisputed.

10 If your Honor finds that such a document, with the
11 statements made by the attorney before the document was given
12 to the government, is still — can still be false and that
13 there's another fact-finding to be needed, then —

14 THE COURT: If the document was created earlier, as it
15 obviously had to have been for it to exist in the first place,
16 with the intent that it would impede the investigation by
17 creating the impression that those statements had not been
18 uttered in January, on the date the notes bear, and assuming
19 materiality is either satisfied or not necessary, isn't that a
20 crime?

21 MR. SCHMIDT: The complicated factor in this case —
22 and, again, this may be a fact — is that, pursuant to a
23 subpoena in 2022, the seminary was required to turn over any
24 document that related to sexual harassment or sexual abuse. So
25 the document itself was turned over because it was required to

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1 be.

2 THE COURT: So?

3 MR. SCHMIDT: And not created to impact the
4 investigation. That —

5 THE COURT: My hypothetical, or my question, is
6 suppose the purpose of creating it was to impede the
7 investigation and that the creator believed at that time and
8 intended at that time that it would be turned over pursuant to
9 the subpoena for the precise purpose of impeding the
10 investigation, not knowing that maybe the lawyer would make the
11 statement on which you rely, assuming it was made in the first
12 place. That's a crime under 1519, isn't it?

13 MR. SCHMIDT: Well, it's not knowing that the lawyer
14 would do that, and I guess then it's a factual question whether
15 he knew it, but the note — that note themselves, I think,
16 makes it absolutely clear that he was told by Mr. Queen that
17 information.

18 THE COURT: The notes you're talking about are which
19 notes?

20 MR. SCHMIDT: The government notes of the
21 conversation.

22 THE COURT: Which didn't exist at the time I'm
23 inquiring about because the conversation hadn't even taken
24 place between the government and the lawyer.

25 MR. SCHMIDT: Then it's a factual issue that what —

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1 what your Honor is saying, it's a factual issue why the notes
2 were created themselves, and at that moment, that's a
3 determination whether or not it's a violation of 1519; is that
4 what your Honor is saying?

5 THE COURT: I'm not saying it's a factual issue. I'm
6 asking you to assume, for the sake of discussion, that it was
7 created for the purpose of misleading the government as to what
8 happened in that conversation and misdated, inaccurately dated,
9 in order to promote the ability of the document to deceive the
10 government. The crime, in other words, was complete long
11 before the documents were turned over, wasn't it, if it was a
12 crime at all?

13 MR. SCHMIDT: The documents were actually created
14 subsequent to the conversation that Mr. —

15 THE COURT: In April, if I understand.

16 MR. SCHMIDT: No, no, it was in May, and it was
17 subsequent to the conversation with the attorney.

18 THE COURT: Subsequent to what conversation by whom
19 with the attorney?

20 MR. SCHMIDT: Mr. Queen's conversation with the
21 attorney. It was created afterwards and given to the attorney
22 afterwards.

23 THE COURT: So is it your submission that what
24 happened is there are no documents up until the point where
25 Queen speaks to the attorney, and after he speaks to the

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1 attorney, he then creates these notes; he dates them in
2 January, though he creates them in May; and he then gives them
3 to the attorney, who then has the conversation with Ms. Kelly
4 that you claim, and then turns over the notes? Is that your —

5 MR. SCHMIDT: That is correct.

6 THE COURT: That's your theory.

7 MR. SCHMIDT: That is correct. It's correct because
8 of the requirement that he turn over anything to do with any
9 kind of sexual abuse claims, turn that over as well as other
10 documents that were made available to the government.

11 THE COURT: So he created a false document in order to
12 further turning it over to the government?

13 MR. SCHMIDT: No, he made a false document — he made
14 a document —

15 THE COURT: With a false date.

16 MR. SCHMIDT: — to satisfy the need to turn over
17 something because he was required, or believed he was required,
18 under the subpoena.

19 THE COURT: And because he had told several people
20 that he had contemporaneous notes?

21 MR. SCHMIDT: And he told several people that he did,
22 yes.

23 THE COURT: And that had been false, in your view?

24 MR. SCHMIDT: I'm sorry?

25 THE COURT: Your position is the statements he made to

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1 others earlier that he had contemporaneous notes were false
2 statements?

3 MR. SCHMIDT: That's correct.

4 THE COURT: Because there were no contemporaneous
5 notes.

6 MR. SCHMIDT: That is correct. That is correct.

7 THE COURT: OK.

8 MR. SCHMIDT: The document —

9 THE COURT: Ultimately, your argument to the jury
10 might be — I'm just playing lawyer for a minute — the reason
11 the false date is on the notes, that you claim he put there
12 after talking to the lawyer, was to somehow reconcile the newly
13 created notes with his previous false statements to the other
14 employees that he had contemporaneous notes, which he never
15 had?

16 MR. SCHMIDT: That is correct.

17 THE COURT: You don't think there's an issue of fact
18 there, maybe just a little one?

19 MR. SCHMIDT: Well, your Honor, there would be an
20 issue of fact if the information did not specify the nature of
21 the so-called false document. It's very specific, and because
22 it's very specific and because it relates to being turned over
23 to the government, not actually the creation of it, it talks
24 about the crime being making it available to the government.
25 It does not say the creation of it.

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1 THE COURT: Anything else?

2 MR. SCHMIDT: No, that's it, your Honor.

3 THE COURT: OK. Thank you.

4 Ms. Kelly.

5 MS. KELLY: Your Honor, I plan to be very brief

6 today —

7 THE COURT: Feel free.

8 MS. KELLY: — and rely on our submission, which I
9 think lays out in more detail the points I want to make today.

10 I think defense counsel's presentation today
11 underscores exactly why this motion is inappropriate. This is
12 not, while styled as a motion to dismiss, a motion to dismiss.
13 Mr. Schmidt is seeking a motion for summary judgment based on
14 facts that are far outside what is alleged in the four corners
15 of the information in this case. That exact attempt has been
16 foreclosed by the case law in this circuit, which defense
17 counsel acknowledges in his motion, and I think just can't tap
18 dance around today.

19 As is well-established and well-known to your Honor,
20 the only requirements in a charging instrument — an indictment
21 or, as here, an information — is that the instrument track the
22 language of the statute charged and state the approximate time
23 and place of the offense so that it contains the elements of
24 the offenses charged and it provides adequate notice to the
25 defendant. These requirements are set forth in the cases cited

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1 in our opposition: *Stavroulakis, Vilar, Wedd.*

2 Second Circuit case law also says dismissal is a
3 drastic remedy. That's the *Walters* case. Here, clearly,
4 dismissal is not warranted. The information meets all of these
5 requirements: The statutory allegations track the language of
6 1519, it contains all the elements of the offense, it states
7 the approximate time and place of the offense, and it thus
8 provides sufficient notice to the defendant of the charge
9 against he must defend.

10 In his briefs, the defendant relies on cases that are
11 not applicable. Your Honor talked about one of them already
12 with defense counsel. He relies also on a case called *Yakou*.
13 That's an out-of-circuit case from D.C. that recognized that a
14 district court may dismiss an indictment based on a question of
15 law where there's no timely objection made by the government.
16 That's 420 F.3d at 247. That is, obviously, far afield from
17 the situation here. The government has clearly made a timely
18 objection to the facts that are asserted without support beyond
19 the information.

20 And the question of dismissal is not a question of
21 law. There are numerous factual disputes, including the ones
22 that your Honor just went through with defense counsel, and
23 these are inextricably intertwined with the defendant's
24 potential culpability in this case. That quote, "inextricably
25 intertwined with the defendant's potential culpability," that

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1 comes from a case cited by the defendant, *Aiyer*, 33 F.4th at
2 116. Indeed, in his motion and here today, the defendant is
3 relying on many facts that are outside the allegations in the
4 information. Many of those are inaccurate or unsupported by
5 admissible evidence, but those are questions for another day.
6 Those are questions that will be presented to the jury at
7 trial.

8 As the government noted in our opposition, we're not
9 relying on any facts beyond those alleged in the information,
10 because those are the only ones relevant to the inquiry before
11 the Court today. And critically, the government has not and
12 will not today make a full proffer of its evidence. Therefore,
13 the information here is "not subject to a challenge based on
14 the quality or quantity of evidence." That's the *Alfonso* case,
15 143 F.3d at 776.

16 THE COURT: What is the government's position on
17 whether materiality is an element?

18 MS. KELLY: The government's position is, with respect
19 to omissions, there is case law supporting that the omission
20 must be material with respect to the falsity element. However,
21 with respect to an affirmative false statement, it is not the
22 government's position that materiality is required, and as your
23 Honor noted, that requirement is not supported by Second
24 Circuit case law, and the case that the defendant cites does
25 not stand for that proposition.

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1 THE COURT: Is the only respect in which the
2 government claims falsity the alleged omission, or do you rely
3 also on the misdating or anything else?

4 MS. KELLY: So the government alleges two things in
5 the information: First, that the notes were purportedly
6 contemporaneous notes, and that's in paragraph 7 of the
7 information; and second, with respect to the omission, that the
8 notes leave out a portion, an important portion, of the
9 conversation that the defendant had heard. So it relies on
10 those two allegations to support that element of the crime.

11 THE COURT: So it's the misdating and the omission?

12 MS. KELLY: That's correct, your Honor.

13 THE COURT: OK. Anything else?

14 MS. KELLY: Nothing, your Honor, unless you have
15 further questions.

16 THE COURT: No, I don't. Thank you.

17 Mr. Schmidt, anything else?

18 MR. SCHMIDT: Briefly, your Honor.

19 THE COURT: Sure.

20 MR. SCHMIDT: The only portion that supports what your
21 Honor was discussing, the materiality, is the purported date
22 that it was prepared as being affirmatively false. It would
23 seem unreasonable to avoid the need for materiality where the
24 primary basis is that the information is not complete to make
25 it a false document. Logically, if the date was wrong but all

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1 of the information in the document was correct, to find that
2 that was a false document would not be reasonable or logical if
3 the document was complete and accurate.

4 THE COURT: Sure, it is. It could be because the
5 whole point is that the document would be entitled to greater
6 credence as to what it stated substantively by virtue of the
7 fact that it was contemporaneous, and that indeed is why, no
8 doubt — I shouldn't say "no doubt" — but that is certainly a
9 basis on which one could conclude that that's why they were
10 misdated in the first place.

11 MR. SCHMIDT: Well, in this case, your Honor, it's if
12 the document was complete, as indicated by the statements made
13 by the attorney. But, say, if it was in the document itself,
14 since that was the nature of the investigation and it was
15 supportive of the investigation, then it would not be seeking
16 to influence it in any way.

17 THE COURT: Then there would be no omission. But if
18 it were not helpful to the investigation but, rather,
19 exculpatory, the degree to which it was exculpatory would
20 depend, in no small measure, on the fact that they were
21 purportedly contemporaneous notes.

22 MR. SCHMIDT: I don't disagree with that.

23 THE COURT: OK.

24 MR. SCHMIDT: But that's not the situation both in
25 this case, so it's —

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1 THE COURT: Yes, it is, because your position is that
2 they were complete.

3 MR. SCHMIDT: My position was that it was complete —

4 THE COURT: Yes.

5 MR. SCHMIDT: — in the manner that assisted the
6 investigation and did not obstruct the investigation.

7 THE COURT: OK. I think I have your argument.

8 The motion is denied. It's a motion for summary
9 judgment in sheep's clothing, to mix the metaphor. There are
10 clearly issues of fact. I'm not entitled to resolve them now.
11 The motion depends on material outside the four corners of the
12 information. The rule of completeness does not help the
13 defense here at all. The rule of completeness applies to the
14 receipt of evidence at trial or on a motion for summary
15 judgment, and that's not what we're dealing with. Furthermore,
16 I accept the arguments contained in the government's
17 memorandum, which I'm not going to bother restating in total.

18 Mr. Schmidt, defense counsel sometimes lose cases or
19 arguments, not because they didn't do a good job, but because
20 the facts or the law are against them. You and I have been
21 doing this together on occasion for a very long time, and I
22 have the greatest respect. I understand you work with what
23 you've got, and that's all there is to say about it. I mean,
24 you win some; you lose some. You suit up for them all.

25 Now, trial is now set for November 13 at 9:30. Is it

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1 going to happen? Obviously, nobody's bound by an answer, but I
2 want to have an indication.

3 MR. SCHMIDT: Your Honor, it requires me to raise a
4 particular issue now. The government has informed me that they
5 will be superseding the information with an indictment,
6 including a 1001 charge. I have received what the government
7 has purported to be 3500 material and *Giglio* material, some of
8 which also includes, in my mind, *Brady* material. However, I
9 received it for attorneys' eyes only.

10 At this point, not being able to discuss with my
11 client the substance of much of the material in there, now
12 knowing that a 1001 charge is coming, makes it impossible for
13 me to discuss with him whether we are indeed going to be
14 proceeding to trial on November 13. Therefore, for me to
15 actually act as his attorney in every respect, I request that
16 the material no longer be attorneys' eyes only. That it can be
17 under the protective order, but that I can discuss and show my
18 client the material that is in there so he can make a decision
19 with all the information available on whether we're going to
20 proceed to trial on November 13.

21 THE COURT: Well, I understand your point. Have you
22 discussed this with the government yet?

23 MR. SCHMIDT: I raised it with them, but I haven't
24 gotten an answer as to when I'll be able to review this with
25 apply client because I did just find out about the 1001 charge

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1 that is expected.

2 THE COURT: What's the schedule, Ms. Kelly, on the
3 superseder?

4 MS. KELLY: Well, your Honor, the government intends
5 to do two things in short order: We do intend to supersede to
6 add a 1001 charge based on the defendant's false statements in
7 his Fort Worth interview with the government in May of 2023 and
8 in his New York interview on June 20 of 2023. We also, as
9 previewed for defense counsel — I think it's no secret in this
10 case that the government has made efforts to resolve the case,
11 and we would like to make a plea offer to the defendant, and we
12 intend to do that. We've advised defense counsel that, to the
13 extent that there should be further discussions on that, we
14 should do that as quickly as possible and that we intend to
15 supersede. So I expect that both of those things, the plea
16 offer and the superseder, will be accomplished in the next two
17 weeks, your Honor. There's no additional discovery.
18 Everything is contained in what we've already produced.

19 And with respect to the 3500, as your Honor knows,
20 there have been issues with the protective order in this case.
21 All of the witnesses, or the vast majority of the witnesses in
22 this case, are people well known to the defendant, and the
23 government has concerns about, even under the protective order,
24 how the material will be treated. We don't object, obviously,
25 to the defendant having ample time to consult with his attorney

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1 about the 3500 material, but without knowing what the trial
2 date in the case is going to be, it's difficult to agree to it
3 being turned over. We turned it over to the defense early
4 without a schedule set by the Court, both so that would
5 facilitate these discussions about a resolution and also so
6 that there is ample time to consider that information.

7 MR. SCHMIDT: If I may, your Honor?

8 THE COURT: Just a minute.

9 When do you intend to file and unseal any superseding
10 indictment? Because you know the speedy trial clock prevents
11 you from going to trial on November 13 if you don't supersede
12 till 29 days before the trial date.

13 MS. KELLY: Yes, your Honor. So we have scheduled
14 grand jury time for the week of the 14th. The 14th is a court
15 holiday, and this grand jury sits on days that implicate that.
16 But we expect to go to grand jury that week.

17 THE COURT: Well, is that going to be in time?

18 MS. KELLY: It's butting up to the date, your Honor,
19 but it is that same week.

20 THE COURT: Yes, I understand, but is it butting up to
21 it from the too late side or from the too early side?

22 MR. SCHMIDT: November has 30 days.

23 MS. KELLY: I think we can make it work, your Honor.
24 It will be within the 30 days.

25 THE COURT: OK.

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1 MR. SCHMIDT: If I may, your Honor?

2 THE COURT: Yes, please.

3 MR. SCHMIDT: Mr. Queen, or his wife or anyone else
4 he's in contact with, has not had a single conversation,
5 attempt to have a single conversation with any of the
6 witnesses.

7 THE COURT: Yes, but let me interrupt. The first
8 thing that needs to happen is you and the government need to
9 have a serious conversation about this and see whether you
10 can't resolve it on your own. I'm not as well situated as
11 either of you to decide what you should be able to do and what
12 you shouldn't. At least get to the point where you've either
13 resolved it or have some finite issue for me to deal with.

14 MR. SCHMIDT: I will do that very quickly, your Honor.

15 THE COURT: Well, it's in everybody's interest that
16 you do. And I'm talking to both of you, not just to you,
17 Mr. Schmidt. You need to get moving on this.

18 Now, if we are going to trial, how long a trial is
19 this?

20 MS. KELLY: The government's case is less than a week,
21 your Honor.

22 THE COURT: How many days?

23 MS. KELLY: Approximately four.

24 THE COURT: Any forecast from the defense as to how
25 long, if at all, you would be if the case goes to trial?

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1 MR. SCHMIDT: I could say that, at most, it would be
2 two days. The issue that's problematic is that the witnesses
3 are not in the Southern District of New York, nor nearby. The
4 potential witnesses are either in Florida or in Texas.

5 THE COURT: Well, you're going to have to deal with
6 that.

7 MR. SCHMIDT: I understand that, but it does —

8 THE COURT: You know my proposition is somebody runs
9 out of witnesses, they're done.

10 MR. SCHMIDT: I understand that, your Honor.

11 THE COURT: It's a tough time of the year also, both
12 for travel, holidays. So we're going to need to do it
13 consecutive days. Not Fridays, but consecutive days.

14 Anything else?

15 MR. SCHMIDT: Your Honor, if we're going to trial, an
16 *in limine* motion that we would be preparing would impact
17 whether or not we need to bring up a witness from out of town.
18 Normally, I see from your rules that *in limine* motions need to
19 be filed ten days before the beginning of trial. I'm assuming
20 that it has to be by ten days before trial. Then I can file
21 that sooner?

22 THE COURT: Oh, yes, sure. Absolutely. Absolutely.

23 Thanks, folks.

24 MR. SCHMIDT: Thank you.

25 (Adjourned)